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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,996	02/04/2002	Troy W. Hershberger	5490-000185	4199

27572 7590 03/31/2004

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. BOX 828  
BLOOMFIELD HILLS, MI 48303

EXAMINER
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STEWART, ALVIN J

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 03/31/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/066,996

Applicant(s)

HERSHBERGER ET AL.

Examiner

Alvin J Stewart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 7-13, 16, 19-24 and 27-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 14, 15, 17, 18, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the line substantially parallel to the longitudinal axis must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 14, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Murray et al US Patent 3,965,490.

Murray et al discloses a femoral insert made of biocompatible material. The insert discloses a stem (10), a distal portion having an arcuate configuration (44), a proximal portion (near element 20) and a trunnion portion (18). As shown in Figure 2, the stem has a medial surface and a lateral surface. As shown in Figures 5-7, the stem has a plurality of radii. The first radius is substantially equal to the second radius (see Figure below). Finally, an imaginary line crossing a point (any point) along the arcuate configuration of the distal portion (see marks made

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by the Examiner near to element 44, see attachment) is tangential to a second point at the proximal portion of the stem (see the point mark made by the Examiner in Fig. 2 showing the tangential point at the proximal portion).

Claims 17, 18 and 25-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Pratt, Jr. et al US Patent 4,283,799.

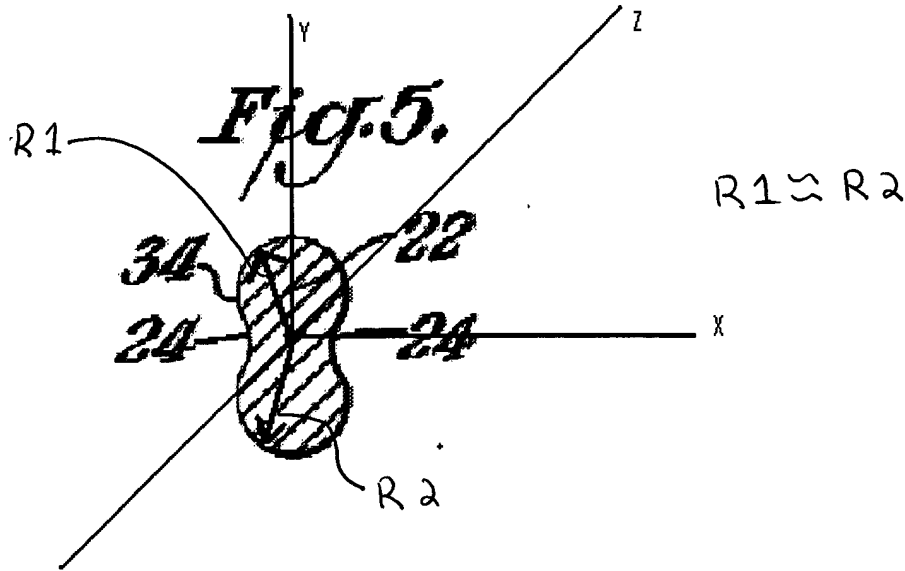
Pratt, Jr. et al discloses a femoral insert made of biocompatible material. The insert discloses a stem, a distal portion (see marks in attachment) having an arcuate configuration, a proximal portion (see attachment) and a distal portion (see attachment). As shown in Figure 2, the stem has a medial surface and a lateral surface. As shown in Figure 1, the stem has a plurality of radii. The first radius is substantially equal to the second radius (see attachment). Finally, the radii of the lateral surface and the medial surface substantially converge along the distal portion so as to form a substantially arcuate configuration tangential to the proximal portion (see marks in attachment).

### ***Response to Arguments***

Applicant's arguments filed January 07, 2004 have been fully considered but they are not persuasive.

Regarding the new limitations entered in claim 1, see figure below showing the two radii and the line substantially parallel to the longitudinal axis.

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The two radii (R1 and R2) are generally tangential to a line substantially parallel to the longitudinal axis. The line is an imaginary line going along the length of the Z axis.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Stewart whose telephone number is 703-305-0277. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*A. Stewart*  
Alvin Stewart  
October 3, 2003.

[54] PRE-COATED BODY IMPLANT

[75] Inventors: George W. Pratt, Jr., Wayland;  
Robert Poss, Marblehead; Jeremy K.  
Chung, Cambridge, all of Mass.

[73] Assignee: Massachusetts Institute of  
Technology, Cambridge, Mass.

[21] Appl. No.: 73,834

[22] Filed: Sep. 10, 1979

[51] Int. Cl.<sup>3</sup> ..... A61F 1/00; A61F 1/03

[52] U.S. Cl. .... 3/1.913; 3/1.9;  
128/92 C

[58] Field of Search ..... 3/1.9, 1.913; 128/92 C,  
128/92 CA; 433/175

[56]

References Cited

U.S. PATENT DOCUMENTS

3,713,860	1/1973	Auskern .....	3/1.9 X
3,790,507	2/1974	Hodosh .....	3/1.9 X
4,051,598	10/1977	Sneer .....	433/175
4,131,597	12/1978	Bluethgen et al. ....	3/1.9 X
4,202,055	5/1980	Reiner et al. ....	3/1.913 X

Primary Examiner—Clifford D. Crowder  
Attorney, Agent, or Firm—Arthur A. Smith, Jr.; Thomas  
J. Engellenner

[57]

ABSTRACT

A pre-coated body implant, such as, for example, a hip prosthesis, in which that portion of the implant that attaches to or is inserted into a skeletal member of the body has a pre-coating of a material (e.g., an acrylic material) covering all or most of said portion and bonded thereto.

4 Claims, 5 Drawing Figures

